

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of	)	CASE NO. OSH 2004-9
	)	
DIRECTOR, DEPARTMENT OF LABOR	)	ORDER NO. 109
AND INDUSTRIAL RELATIONS,	)	
	)	PRETRIAL ORDER
Complainant,	)	
	)	
vs.	)	
	)	
ISEMOTO CONTRACTING CO., LTD.,	)	
	)	
Respondent.	)	
_____	)	

PRETRIAL ORDER

Pursuant to the representations by counsel for the respective parties at an initial conference held by the Hawaii Labor Relations Board (Board) on September 3, 2004, IT IS HEREBY ORDERED THAT:

1. The issues to be determined are:
  - (a) Whether Respondent violated 29 CFR § 1926.21(b)(2) as described in Citation 1, Item 1, issued on July 23, 2004?
    - (i) Whether a hazard existed (i.e., whether the employer instructed employees in the dangers associated with working near heavy equipment and instructed employees to notify operators of their presence while working in the vicinity of heavy equipment)?
    - (ii) Whether the Respondent knew or should have known about the existence of a hazard and exposure of its employee?
    - (iii) Whether compliance is feasible?
    - (iv) Whether the characterization of the violation and the amount of the proposed penalty are correct?
  - (b) Whether Respondent violated 29 CFR § 1926.95(a) as described in Citation 1, Item 2, issued on July 23, 2004?

- (i) Whether a hazard existed (i.e., whether employees who worked in areas under circumstances where they were exposed to moving heavy equipment were required by the company to wear highly visible materials)?
  - (ii) Whether the Respondent knew or should have known about the existence of a hazard and exposure of its employee?
  - (iii) Whether compliance is feasible?
  - (iv) Whether the characterization of the violation and the amount of the proposed penalty are correct?
- (c) Whether Respondent violated 29 CFR § 1926.602(a)(9)(ii) as described in Citation 1, Item 3, issued on July 23, 2004?
  - (i) Whether a hazard existed (i.e., whether the reverse signal alarm on a Caterpillar grader #5227 that backed over an employee was not operational and no employee was assigned to observe clearance during reversing)?
  - (ii) Whether the Respondent knew or should have known about the existence of a hazard and exposure of its employee?
  - (iii) Whether compliance is feasible?
  - (iv) Whether the characterization of the violation and the amount of the proposed penalty are correct?
- (d) Whether the unpreventable employee misconduct defense or any other affirmative defense is applicable?

2. Discovery deadlines are:

Unnamed and live witness identification, and identification of expert and exchange of reports	November 15, 2004
Discovery cut-off	December 20, 2004

3. Trial is scheduled for three days commencing on January 25, 2005 at 9:30 a.m. in the Board's hearing room, Room 434, 830 Punchbowl Street, Honolulu, Hawaii.

4. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, September 7, 2004.

HAWAII LABOR RELATIONS BOARD

  
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CHESTER C. KUNITAKE, Member

  
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KATHLEEN RACUYA-MARKRICH, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees at least five working days prior to the trial date.

Copies sent to:

J. Gerard Lam, Deputy Attorney General  
Daniel G. Mueller, Esq.